

## ORDINANCE NO: 13- 434

**BE IT ORDAINED** by the City Council of the City of Huntsville, Alabama as follows:

**Section 1.** Section 18-36 of the Code of Ordinances of the City of Huntsville, Alabama, is hereby amended to read as follows:

**Sec. 18-36. Sidewalk cafes, vendors, and mobile food vendors.**

(a) *Definitions.* For purposes of this section 18-36, the following words, terms, and phrases shall have the meanings ascribed to them in this subsection (a), unless the context clearly indicates a different meaning:

*Central city area* means the area described in section 18-31.

*Central city core area* means the following described area located within the central city area:

Beginning at the intersection of Church Street and the Norfolk Southern Railroad; thence Southeast along the centerline of Church Street to the intersection with Monroe Street; thence Southwest along the centerline of Monroe Street to the intersection with Holmes Avenue; thence East along the centerline of Holmes Avenue to the intersection with Church Street; thence Southeast along the centerline of Church Street to the intersection with Williams Avenue; thence Northeast along the centerline of Williams Avenue to the intersection with Franklin Street; thence Northwest along the centerline of Franklin Street and to the intersection with Eustis Avenue; thence Northeast along the centerline of Eustis Avenue to the intersection with Greene Street; thence Northwest along the centerline of Greene Street to the intersection with Monroe Street and Meridian Street; thence North along the centerline of Meridian Street to the intersection with Pratt Avenue; thence West along the centerline of Pratt Avenue to the intersection with I-565; thence Southwest along the centerline of I-565 to the intersection with Church Street; thence Southeast along the centerline of Church Street to the intersection with the Norfolk Southern Railroad and the point of beginning.

*Central city review committee* or *committee* means a committee comprised of the police chief, the city-clerk treasurer, and the manager of planning administration, or their respective designees.

*Business license* shall have the same meaning ascribed to it in section 15-31 of this Code.

*Permit* means a sidewalk cafe permit, a vendor's permit, or a mobile food vendor's permit issued under the authority of this section.

*Permitted activity* means the sidewalks cafes, vendors, or mobile food vendors permitted under this section.

*Permitted premises* means that portion of the public streets, sidewalks, or parks that is allowed by the permit to be occupied for the permitted activity.

*Public works activity* means any public works project; public building project; infrastructure construction, maintenance, or repair; or other public improvement activity of the state or city.

(b) *General conditions.* Each of the following conditions shall apply to the activity or persons permitted or regulated under this section:

- (1) The permit shall be in addition to the required business license and the permit holder shall obtain and maintain a business license from the city and, failing to so obtain or maintain the business license, the permit issued under this section shall be automatically revoked without the need for any action from the city or any right of appeal by the permit holder.
- (2) The permit holder shall comply with all applicable laws, rules, and regulations that pertain to the permitted activity and use of the permitted premises, including city and state health laws and the obtaining of the required health department permitting.
- (3) The free passage of pedestrians along the sidewalk shall not be prevented or substantially impaired and there shall be at least a minimum sidewalk width of five feet of unencumbered sidewalk that is open for pedestrian use maintained adjacent to the permitted premises.
- (4) No signs shall be allowed to be placed on any portion of the public sidewalks, streets, or parks, including the permitted premises, except that a mobile food vendor may affix signage to its mobile food vending unit and a vendor may affix signage to its cart or other equipment.
- (5) Access to adjacent buildings or uses shall not be impeded.
- (6) At any time and from time to time the city clerk-treasurer may, in the case of a vendor's permit or mobile food vendor's permit, re-assign a permit holder's assigned space to another appropriate location and, in the case of a sidewalk cafe permit or a mobile food vendor's permit, temporarily suspend the permit, in order to accommodate:
  - a. A special event, including lease events and sponsor events, permitted under Chapter 23, Article VI of this Code;
  - b. Another permitted activity authorized under this section; or
  - c. A state or city project, activity, or event, including a public works activity.
- (7) A permit holder shall keep the permitted premises and adjacent public property clean and free from all trash, litter, debris, or waste generated from the operation of its business. The permit holder's installations, equipment, carts, and other items shall be maintained and kept in good and presentable condition and repair and free from graffiti.
- (8) The permit holder shall not erect or construct any permanent structure or modify or affix anything to any existing structure or any public property or otherwise damage or

deface public property.

(9) A vendor or mobile food vendor must use its permitted premises for its permitted activity on a routine basis during the appropriate seasons for outdoor use, unless prevented from doing so by circumstances beyond the permit holder's control.

(10) The city clerk-treasurer may, at any time and from time to time, attach additional conditions to the use of the permitted premises in order to protect the public health, safety, or general welfare.

(11) Upon the termination, whether by revocation or otherwise, of the permit, the permit holder shall restore the permitted premises to the satisfaction of the city clerk-treasurer.

(c) *Permits.*

(1) *Permit requirement.*

- a. Every person who shall desire to use public space in the central city core area or, where allowed under this section, the central city area, to conduct an activity authorized under this section shall make application with the city clerk-treasurer on forms provided by the city, which application shall include the applicants complete name and address and, where applicable, its trade name, the address of any location used for storage of carts, supplies, equipment, or inventory, installation plans, indemnification of the city, and proof of insurance.
- b. Permits required by this section shall be renewed annually by filing, at business license renewal time, a permit renewal application with the city clerk-treasurer on forms provided by the city. Permits are not transferrable.
- c. Permit holders shall notify the city clerk-treasurer within ten days of a change in the permit holder's address.
- d. The city-clerk treasurer is hereby authorized to administer the provisions of this section and to issue a permit authorized under this section in accordance with this section.

(2) *Use fee.* At the time of the filing its application or renewal application, as the case may be, the applicant for a permit shall pay to the city a non-refundable, annual use fee for the right to use the permitted premises as follows:

- a. The applicant for a vendor's permit shall pay \$100.00.
- b. The applicant for a sidewalk cafe permit shall pay \$100.00.
- c. The applicant for a mobile vendor's permit shall pay \$100.00 per mobile food vending unit located on public vending space.

(3) *Revocation, suspension, or non-renewal of permit; no vested right.*

a. The city clerk-treasurer is authorized to revoke or suspend or not renew a permit for a violation of this section; provided that the permit holder shall first be given a reasonable period of time, not to exceed 20 days, to cure the violation, unless the clerk-treasurer determines that the violation is not reasonably capable of being cured, the permit holder refuses to cure the violation, or the permit holder has on multiple occasions within a given calendar year committed the same violation.

b. The permit holder may appeal the action taken against the permit to the two remaining members of the central city review committee by filing, within twenty days of the date of the action taken, a written request with the city clerk-treasurer. The hearing on the appeal shall be held by the two remaining members of the committee within a reasonable period of time and the permit holder shall be provided advance written notice of the date and time of the hearing of the appeal and shall have the opportunity to be heard at the hearing. The decision of the city clerk-treasurer shall be upheld unless the two remaining members of the committee determine that a reversal is justified under the circumstances.

c. Notwithstanding anything to the contrary in this subsection (3), while an appeal is pending the permit holder may continue to operate under the permit unless the city clerk-treasurer determines that the permit should be suspended pending the outcome of the appeal in order to protect the public's health or safety or prevent damage to or destruction of public property.

d. Action taken against a permit shall not constitute action being taken against the business license.

e. Notwithstanding anything to the contrary in this section: (i) a permit holder shall acquire no vested right to a permit or use of the permitted premises and the provisions of this section and any rights granted hereunder, in whole or part, are subject to repeal or amendment, at any time or from time to time; and (ii) there is no right of appeal from a temporary suspension of a permit under subsection (b)(6) of this section.

f. Nothing in this subsection (3) shall be construed to prevent the enforcement, by arrest or citation, of applicable laws, including a violation of this section.

(d) *Sidewalk cafes.*

(1) *Sidewalk cafe permit.* Subject to the provisions of this section, any person engaged in the business of operating a restaurant, cafe, cafeteria, or other public place where meals, food, or refreshments are prepared and furnished upon premises licensed for such use that are within the central city core area may apply for a sidewalk cafe permit from the city in order to use the public sidewalk adjacent to such premises as a sidewalk café for its patrons.

(2) *General conditions.* Sidewalk cafes shall be subject to each of the following conditions:

a. No alcoholic beverages are to be served or consumed upon the permitted premises unless the provisions of subsection (3) of this subsection (d) are met.

b. The city may require that the permitted premises be delineated by a railing or other method of delineation that is not affixed to any portion of the sidewalk or other public property.

c. During hours when the establishment is closed for business chairs shall either be removed from the sidewalk or otherwise secured so as to prevent their use while the business is closed; provided that, notwithstanding the foregoing, the city clerk-treasurer may, at any time and from time to time, require that all or any portion of the installations on the permitted premises be removed when the establishment is closed for business for public safety or convenience. At all times the permitted premises and the installations thereon shall be maintained in a neat and presentable manner, without clutter, and chairs shall be neatly stacked or placed when not in use.

d. All proposed installations upon or over the permitted premises, including location, materials used, appearance, style, extent, and method of installation, shall be subject to review and approval of the central city review committee. Detailed plans and specifications of the installation suitable in form and content to the committee shall be submitted to the office of the city clerk-treasurer together with any other information that may be required by the committee in order to approve the installation. Such installations may include customer tables and seating, railings or other methods of delineating the space, awnings to be installed over the permitted premises, table umbrellas, and containers of plants. At any time and from time to time the committee may require installations to be modified or removed for the public health, safety, or general welfare. All installations shall be installed at the sole costs and expense of the permit holder and under proper building and other technical code permitting as may be required.

e. A permit holder shall make its indoor bathroom facilities available to its sidewalk café customers, and in no event shall the permit holder be allowed to install any outdoor bathroom facilities.

f. Should the committee determine that lighting is required for the public safety and convenience, then the permit holder shall, at its sole expense and cost, provide such required lighting; provided said lighting shall not be affixed so as to damage or deface public property, and further provided, the permit holder shall obtain and maintain any applicable permits for installation and operation of the lighting, including but not limited to electrical permits.

g. There shall be no outside live music or entertainment. Music may be played outside over a public address system, provided that it shall cease at 10:00 p.m.

(3) *Sidewalk cafes serving alcoholic beverages.* Alcoholic beverages may be served to patrons seated at tables and chairs on the permitted premises, subject to each of the following conditions:

- a. The permit holder shall be duly licensed by the state and city to sell alcoholic beverages for on-premises consumption and such licensing shall include as a portion of the licensed premises the permitted premises.
- b. The permit holder shall not be an establishment that provides live entertainment or dancing inside its licensed premises unless it qualifies as a restaurant (as defined by the zoning laws of the city).
- c. The establishment shall comply with applicable state and city alcoholic beverage laws, which includes the regulations of the Alabama Alcoholic Beverage Control Board governing the display of alcoholic beverages and their service on patios adjacent to the licensed premises.
- d. The permit holder shall be responsible for the provision of security within the permitted premises during the period of the permit; provided, however, nothing herein shall prevent any law enforcement officer or other official from entering upon the permitted premises to perform any law enforcement function or otherwise administer or enforce any federal, state, or local law.
- e. The permit holder shall obtain and maintain throughout the permitted period bodily injury and property damage liability insurance, on an occurrence basis, naming the city, its officials, officers, employees, and agents as an Additional Insureds, covering the permitted premises in a minimum amount of ONE HUNDRED THOUSAND DOLLARS (\$100,000.00) for the injury to or death of any one person and THREE HUNDRED THOUSAND (\$300,000.00) DOLLARS for the injury to or death of any number of persons in one occurrence, and property damage liability insurance in the amount of ONE HUNDRED THOUSAND (\$100,000.00) DOLLARS. Such insurance shall specifically insure the permit holder against all liability assumed by the permit holder hereunder as well as liability imposed by law, and shall insure both the city and permit holder, but shall be so endorsed as to create the same liability on the part of the insurer as though a separate policy had been written for the city and permit holder. Such policy of insurance shall be issued by a company authorized to engage in the insurance business in the state of Alabama, maintaining a Best rating of not less than "A", and shall be approved by the city attorney or his designee prior to the issuance of a permit. The city clerk-treasurer may, at any time and from time to time, require the permit holder to provide a Certificate of Insurance or other proof of insurance.
- f. The applicant for a permit shall, at the time of making application for a permit and on forms provided by the city, agree to indemnify and hold harmless the city, its officials, officers, employees, agents, contractors, and volunteers performing authorized city functions, from and against any and all claims, costs, losses, expenses through appeal (including reasonable attorneys' fees, and costs or expenses incidental to the investigation of claims and lawsuits), demands, payments, suits, actions, recoveries, penalties, fines, liabilities, and judgments, of any nature and description, resulting from or arising out of the acts or omissions of the permit holder, its officers,

servants, agents, contractors, employees, or customers, in connection with the conduct of the permitted activity or the use of the permitted premises. This provision shall survive the termination, whether by revocation or otherwise, of the permit.

(e) *Vendor's permit.*

(1) *Definitions.* For purposes of this subsection (e), the following words, terms, and phrases shall have the meanings ascribed to them in this subsection (1), unless the context clearly indicates a different meaning:

*Public vendor space* means the public sidewalks and parks located in the central city core area, and the routes of public parades which are located within the central city area, but only during the hours of such parades.

*Vendor activity* means:

- a. Demonstration or sale of the following products:
  - (i) Sandwiches, hot dogs, hot tamales, hamburgers, pizzas and drinks (other than alcoholic beverages);
  - (ii) Candies, nuts, popcorn and confections;
  - (iii) Ice cream, ice cream bars and related confections;
  - (iv) Fruits and vegetables;
  - (v) Novelties and homemade artifacts which are handmade by the permit holder or his employees, and specifically excluding finished or unfinished products bought for resale; and
  - (vi) Fresh cut and dried flowers.
- b. To take and sell photographs where the parties photographed willingly pose for the pictures and the picture is developed on the spot where taken and there delivered to the parties photographed.
- c. Painting, sketching, drawing; exhibiting original paintings, sketches or drawings of the permit holder; or the sale of the permit holder's original (including prints or other reproductions) paintings, sketches, or drawings.
- d. The sale of new or used books.
- e. Exhibitions or performances by a single performer, educational or otherwise, when admission or fee is charged. The term shall not include exhibitions or performances that are a part of the conduct of an organized event regulated by Chapter 23, Article VI of this Code.

(2) *Vendor's permit.* Subject to the provisions of this section, any person engaged in the

business of operating a vendor activity may apply for a vendor's permit from the city in order to use public vendor space to conduct its vendor activity.

(3) *Assignment of space.* Each vendor's permit shall designate that portion of the public vendor space assigned to the permit holder by the city clerk-treasurer. Assignments shall be made by the city clerk-treasurer based on the preference of the applicant, the availability of the space, and any other factor deemed appropriate by the city clerk-treasurer based on the public's health, safety, and general welfare. Where more than one applicant for a permit expresses a preference for the same location, the space shall be assigned to the applicant first filing a completed application for the space; provided, that, where a permit is being renewed from the prior year, then the renewal applicant may be given preference.

(4) *Sponsor's events.* Where there are multiple vendors of vendor activities organized under a single sponsor, the sponsor shall make application for a special event permit under Chapter 23, Article VI of this Code, and shall be regulated by that article. A vendor operating under a sponsor's special event permit shall not be required to obtain a vendor's permit under this subsection (e).

(5) *Condition.* No permit holder shall operate or locate in any residential district or adjacent to any building used exclusively for residential use.

(f) *Mobile food vendors.*

(1) *Definitions.* For purposes of this subsection (f), the following words, terms, and phrases shall have the meanings ascribed to them in this subsection (1), unless the context clearly indicates a different meaning:

*Mobile food vending unit* means a trailer or motorized vehicle designed to be portable and not permanently attached to the ground from which only prepared food or beverages, excluding alcoholic beverages, are peddled, vended, sold, displayed, offered for sale, or given away.

*Public mobile food vendor space* means space on public property located within the central city core area, which is approved for a mobile food vending unit by the city's manager of planning administration.

(2) *Mobile food vendor's permit.* Subject to the provisions of this section, any person engaged in the business of operating a mobile food vending unit may apply for a mobile food vendor's permit from the city in order to use public mobile food vendor space to operate its mobile food vending unit.

(3) *Assignment of space; number of units.*

a. Each permit shall designate that portion of the public mobile food vendor space assigned to the permit holder by the city clerk-treasurer. Assignments shall be made by the city clerk-treasurer based on the preference of the applicant, the availability of the space, and any other factor deemed appropriate by the city



clerk-treasurer based on the public's health, safety, and general welfare. Where more than one applicant for a permit expresses a preference for the same location, the public mobile food vendor space shall be assigned to the applicant first filing a completed application for the space; provided, that, where a permit is being renewed from the prior year, then the renewal applicant may be given preference.

- b. A mobile food vendor may apply for more than one public mobile food vendor space. However, in order to accommodate other mobile food vendors, the city clerk-treasurer may limit or equitably apportion the number of public mobile food vendor spaces used by a mobile food vendor or a person associated with the vendor, such as a relative, family member, or, in the case of a vendor that is an entity, its officers, members, managers, or partners.

(4) *Conditions.*

- a. For mobile vending units that are located on or adjacent to a street, food service shall be solely from that side of the unit that opens away from the street.
- b. Hours of operation for mobile food vending units, not including set-up or take-down, shall be from 9:00 p.m. Thursday, Friday, and Saturday until 2:00 a.m. Friday, Saturday, and Sunday. Vendors may set-up one hour before opening and take-down 30 minutes after closing. Mobile food vending units shall be removed from public property at times other than the hours of operation and the set-up and take-down periods.
- c. Mobile vending units shall not be placed or operated so as to impede vehicular traffic's use of the streets.
- d. No outdoor loudspeaker, public address system, music, or other form of entertainment shall be audible from mobile food vending units.

**Section 2.** The severability provisions of section 1-8 of the Code of Ordinances of the City of Huntsville, Alabama are specifically included herein by reference as if fully set forth.

**Section 3.** This Ordinance shall become effective upon its adoption and approval.

**ADOPTED** this the \_\_\_\_\_ day of \_\_\_\_\_, 2013.

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President of the City Council  
Of the City of Huntsville, Alabama

**APPROVED** this the \_\_\_\_\_ day of \_\_\_\_\_, 2013.

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Mayor of the City of  
Huntsville, Alabama